1525. Again, this far exceeds in quantity and quality RBI's performance.

42. Far closer to the mark, but still well over RBI's performance, was the renewal applicant's performance in *Video 44*, 5 FCC Rcd 6383 (1990). In *Video 44*, the incumbent broadcast at least one hour per day of non-entertainment programs. That is far more than RBI broadcast at any time during its license term. In *Video 44*, the incumbent's performance was deemed ***NOT*** to justify any renewal expectancy. *A fortiori*, RBI is not entitled to any such expectancy here.

43. In its PFC RBI suggests that RBI's bankruptcy at the beginning of the license term adversely affected RBI's programming performance. RBI PFC at 91, 18-19. There is no record support for that suggestion.

44. In determining the scope of the standard comparative issue herein, the Presiding Judge acknowledged that, at the beginning of the license term, RBI had been in bankruptcy and that, at least according to RBI, RBI "was constrained to heed the directives of the bankruptcy court". *Memorandum Opinion and Order*, FCC 99M-47, released August 9, 1999, at 6. The Presiding Judge stated

> The bankruptcy court would be concerned with overseeing expenditures, not programming. To the extent that [RBI] may have been restricted on expenditures for programming, ***a circumstance to be established and not assumed, such evidence may be introduced by [RBI]*** . . . .

Id. (emphasis added). RBI offered no such evidence, and there is therefore no basis from which to conclude that RBI's programming was in any way constrained by RBI's financial situation. RBI's suggestions that financial considerations may have affected its programming performance are without support and must be rejected.

45. Moreover, even if the bankruptcy proceeding were deemed, *arguendo*, to

have imposed some constraint on RBI's programming, the bankruptcy proceeding was concluded in March, 1992 according to RBI. RBI PFC at 14 (¶20). Thus, for the final two years of the license term, at least, no such constraints existed. And yet, in January, 1994 -- just months before the filing of RBI's renewal application and the end of its license term and almost two years after the March, 1992 conclusion of the bankruptcy proceeding -- RBI was still unable or unwilling to take any steps to notify its service area of the most powerful earthquake ever to hit the area. There is no evidence at all that RBI's unwillingness or inability in that regard had anything to do with financial constraints.

(b) ***REPUTATION IN THE COMMUNITY***

46. RBI claims, at page 35 of its PFC, that its public witnesses "confirmed WTVE's role in providing public service programming to its audience". That confirmation, however, was not what RBI imagines it to have been. RBI's public witnesses uniformly acknowledged that they themselves did not watch the station for its public service programming. Adams PFC at 69-88. What does it say about a station whose own supposedly supportive public witnesses did not themselves watch the station?

47. Moreover, to the extent that public witness testimony may be intended to establish that incumbent renewal applicant's performance has been outstanding or exemplary, the fact is that RBI public witnesses repeatedly testified that other media provided essentially the same, or even greater, local public service or coverage than did RBI. *See* RBI Exh. 29, p. 8; RBI Exh. 31, pp. 7, 13; RBI Exh. 32, p. 6; RBI Exh. 33, p. 34.

48. As a result, RBI's public witness testimony does not support a finding or conclusion that RBI's performance has been outstanding, extraordinary or in any way favorably exemplary.

(c) *COMPLIANCE WITH FCC RULES AND POLICIES*

49. The extent to which RBI failed during the license term to comply with Commission rules and policies, as well as the Communications Act of 1934, as amended, is addressed in detail in Adams's PFC at pages 94-114 and 233-234 and need not be extensively revisited here.

50. In its PFC RBI acknowledges at least some failures to comply with the rules. In so doing, however, RBI demonstrates an incredible willingness to fudge the facts in an apparent effort to reduce RBI's otherwise obvious culpability.

51. For example, it is universally acknowledged that RBI entered into a Management Services Agreement ("MSA") with Mr. Parker's company in May, 1989, and that the bankruptcy court approved the MSA no later than August 28, 1990. *See* Adams PFC at 94-96. The MSA was not reported to the Commission until 1997, some seven years late. [12/]

[12/] RBI claims that the MSA "was reported in an amendment filed by [RBI] on February 7, 1992". RBI PFC at 97. As demonstrated in Adams PFC at 95-96, that claim is at best disingenuous. The only reference to the MSA in the February, 1992 amendment was a passing reference on the next-to-last page of an attachment to the amendment. That passing reference was to a "contract of employment". Adams Exh. 30, p. 8. It did not mention that that "contract of employment" essentially turned control of the station's operations over to Mr. Parker. Nor did it mention that that "contract of employment" included a provision for substantial RBI stock ownership by Mr. Parker. To say that this passing reference constituted a "report" to the Commission about the MSA is incredible.

52. In its own defense, RBI claims that the Commission's reporting requirements with respect to the MSA were "not without ambiguity", citing Section 73.3613(c)(1) of the Commission's rules. That argument is stunningly disingenuous for at least two reasons.

53. First, Section 73.3613(c)(1) required the submission of the following:

> Management consultant agreements with independent contractors; contracts relating to the utilization in a management capacity of any person other than an officer, director, or regular employee of the licensee or permittee; station management contracts with any persons, whether or not officers, directors, or regular employees, which provide for both a percentage of profits and a sharing in losses; or any similar agreements.

The two parties to the MSA were RBI and Partel, Mr. Parker's company. Partel, a separate corporate entity, was plainly an independent contractor. And even if RBI had ***any*** doubts about that, the final phrase of the rule made it perfectly clear that the Commission expected "any similar agreements" to be submitted. It is impossible to take seriously RBI's suggestion, at page 97 of RBI PFC, that RBI may have decided not to file the MSA in a timely manner because RBI was confused about what was required by the subsection quoted above.

54. But beyond that, RBI's explanation fails to acknowledge the language of Section 73.3613(b)(3), which required the submission of any agreement affecting, directly or indirectly, the ownership of a licensee's stock. That subsection specifically required the submission of "pledges, trust agreements, options to purchase stock and other executory agreements". The MSA clearly fit that description, as it included a provision granting Partel the right to acquire a significant percentage of RBI stock. RBI Exh. 18, pp. 6-17; Tr. 626. Thus, regardless of any conceivable "ambiguity" under Subsection

73.3613(c)(1), submission of the MSA was unquestionably required by Subsection 73.3613(b)(3).

55. RBI's discussion of its failure to file the MSA is limited to the supposedly "ambiguous" language of Section 73.3613(c)(1), presumably because RBI feels that a claim of ambiguity may somehow excuse its seven-year delay in filing the agreement. But RBI's failure to acknowledge and address the requirement of Section 73.3613(b)(3), which imposed a far more obvious reporting obligation, undermines RBI's claim. Indeed, that failure casts serious doubt on the bona fides of RBI's proffered claim, which was, as noted above, questionable in any event.

56. Both RBI and the Bureau assert that there is no basis to infer intentional concealment by RBI relative to the MSA or other matters not properly reported by RBI. RBI PFC at 98; Bureau PFC at 77-78, 80. Adams disagrees.

57. The MSA was entered into less than a year after Mr. Parker was twice found to have engaged in fraud or deception before the Commission. *See Religious Broadcasting Network*, 3 FCC Rcd 4085 (Rev. Bd. 1988); *Mt. Baker Broadcasting Co., Inc.*, 3 FCC Rcd 4777 (1988). The MSA accorded to Mr. Parker and Partel, Inc., his corporate alter ego, essentially complete control over the operation of Station WTVE(TV), including a veto over corporate spending. *See* Adams PFC at 96. Filing the MSA would have put the Commission on notice that Mr. Parker had assumed control of the station without prior approval; at a minimum, it would have alerted the Commission that Mr. Parker was seeking to re-enter the broadcasting industry, notwithstanding the adverse findings about his misconduct less than a year earlier.

58. RBI and Mr. Parker obviously had a motive to withhold the MSA from the Commission.

59. This is underscored by the events of October-November, 1991. As set out at length in Adams PFC at 99-114, on October 15, 1991, Mr. Parker personally issued stock in RBI, resulting in an unauthorized transfer of control. Two weeks later, on October 30, 1991, he caused that newly-issued stock to be voted in favor of a new slate of RBI directors.

60. Less than two weeks after that, Mr. Parker signed an application for consent to a transfer of control of RBI, essentially seeking *post hoc* approval of his October 15, 1991 stock issuance. If that issuance had been purely innocent, Mr. Parker could and should have referenced it in the November, 1991 application, with an explanation of how the unauthorized stock issuance had occurred and why it was proper or at least excusable. Mr. Parker did nothing of the kind. Instead, he pretended that the stock issuance had not occurred at all, and that no new directors had been elected. [13/]

61. Mr. Parker continued this charade for years thereafter. In this very proceeding, he advised the Presiding Judge in July, 1999 that "Parker only became a stockholder [in RBI] . . . in 1992". *See* Adams PFC at 102-103. That was absolutely

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[13/] The Bureau acknowledges that Mr. Parker "could have had a motive to conceal the issuance of the stock", Bureau PFC at 80. The Bureau then lets RBI off the hook, asserting that "the evidence does not disclose that anyone connected with the application focused on stock issuance as a matter of importance". *Id.* But Mr. Parker is the only person who signed the WTVE(TV) Transfer Application. There is no indication in the record that the Sidley attorneys were even aware that Mr. Parker had issued the RBI stock in October, 1991. It would therefore be more accurate to state that there is no evidence that Mr. Parker told anyone else connected with the application about the stock issuance.

false, as Mr. Parker, having personally issued the stock to Partel in October, 1991, knew.

62. The overall record of this proceeding provides a reasonably clear image of Mr. Parker. Having been caught, twice, by the Commission engaging in fraudulent or deceptive misconduct in 1988, Mr. Parker moved into RBI in 1989. Rather than risk encountering further problems at the Commission in connection with his involvement in RBI, Mr. Parker simply failed to advise the Commission of that involvement. His involvement increased, to the point that he issued corporate stock and took effective control of the company in October, 1991. Again, had he alerted the Commission to this, with full disclosure about his own history before the Commission, he would have been courting disaster -- particularly since the unauthorized issuance, by Mr. Parker, of RBI's stock could be seen as a variation on his misconduct in the *San Bernardino Proceeding*. [14/] So in the Novemer, 1991 transfer application he didn't bother to mention the stock issuance or the election of directors to the Commission, and he was less than fully forthcoming and candid about his own history before the Commission.

63. His chicanery succeeded in 1992, with the grant of the November, 1991 transfer application. When the instant proceeding was designated and Adams sought to inquire about RBI's conduct in 1989-1991, RBI and Mr. Parker unsuccessfully attempted to use that 1992 grant as a shield deflecting Adams's inquiry. Again, had Mr. Parker's

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[14/] The risk of encountering problems at the Commission should his full history be disclosed was real. This was conclusively established in 1997, when the full Commission, having finally been alerted to Mr. Parker's history, expressly held that "serious character questions" existed concerning Mr. Parker's qualifications. *Two If By Sea Broadcasting, Inc.*, 12 FCC Rcd 2254 (1997).

conduct from 1989-1991 been proper or excusable, RBI could and should have been forthcoming about that conduct. RBI was not, arguing instead, for example, that Mr. Parker did not acquire any ownership until March, 1992.

64. In short, the reporting violations noted by Adams must be seen as part of a modus operandi by Mr. Parker and RBI intended to prevent or at least discourage examination of Mr. Parker's involvement in the station. RBI's failures to report can and should be interpreted in this light, and significant comparative disadvantage should be charged against RBI as a result.

(d) *SUMMARY CONCERNING RENEWAL EXPECTANCY*

65. RBI is not entitled to any renewal expectancy. Its programming performance was dismal, both quantitatively and qualitatively. It provided less than minimal service to its audience and service area. Even RBI's own public witnesses didn't watch the station. Further, RBI failed repeatedly to comply with the Commission's rules and policies, and it engaged in an unauthorized transfer of control in violation of the Communications Act of 1934, as amended. And, as discussed in Adams's PFC, the record establishes that RBI made no investments in improved service to the public. Instead, during the last three years of the license term RBI paid more than $300,000 to Mr. Parker. All of these factors mandate that RBI not be given any renewal expectancy.

B. THE PHASE II ISSUE

66. RBI's discussion of the Phase II Issue demonstrates Mr. Parker's continuing propensity to disregard or twist inconvenient facts to conform with his, and RBI's, self-serving vision of reality.

67. RBI's position has two primary bases. First, RBI contends that Mr. Parker properly provided all the information that was required of him. RBI PFC at, *e.g.*, 101-114. Second, RBI argues that there is no evidence of any intent to deceive, particularly in light of Mr. Parker's supposed reliance on the advice of counsel. RBI PFC at, *e.g.*, 114-124.

(1) MR. PARKER DID NOT SATISFY THE COMMISSION-IMPOSED OBLIGATION TO DISCLOSE.

(a) *THE SAN BERNARDINO AND MT. BAKER DECISIONS*

68. As an initial matter, RBI fails to acknowledge the full extent of the Review Board's decision in the *San Bernardino Proceeding*. Instead, it cherry-picks a little language here and a little language there in an effort to bolster the claim that Mr. Parker might reasonably have believed that the Review Board somehow, someway, somewhere, reversed Judge Gonzalez's disqualification of Mr. Parker's applicant in that proceeding. *See* RBI PFC at 47.

69. In fact, the Review Board specifically announced that it was adopting Judge Gonzalez's findings and conclusions, except as the Board might modify them. *San Bernardino Review Board Decision*, 3 FCC Rcd at 4085 (¶1). When the Review Board chose to modify the judge's findings or conclusions, it did so expressly and explicitly.

Id. at 4090 (¶14) ("we find the ALJ's disqualification of Sandino from this proceeding was error"). No such modification appears in the Board's decision with respect to Mr. Parker's applicant, San Bernardino Broadcasting Limited Partnership ("SBBLP").

70. To the contrary, after reviewing the record concerning the Parker/SBBLP real-party-in-interest issue which formed the basis of Judge Gonzalez's disqualification, the Board stated:

> Having reviewed, in totality, the underlying record on this matter [*i.e.*, the disqualifying real-party-in-interest issue], we find no error in the ALJ's core conclusion that Van Osdel is neither the sole nor dominant management figure purported by [SBBLP], but a convenient vizard. She can claim no serious or material role in [SBBLP]'s most elementary affairs. [SBBLP] is a transpicuous sham [citation omitted], and the ALJ justly rejected its attempted fraud.

3 FCC Rcd at 4090 (¶18). In view of this affirming language, particularly when it is coupled with (a) the Review Board's preliminary statement that the Board was adopting Judge Gonzalez's findings and conclusions and (b) the fact that there is absolutely no language which even begins to suggest any reversal of Judge Gonzalez's disqualification of SBBLP, it is impossible to read the Board's decision as being limited to integration matters only.

71. RBI attempts to support its claim that the Board's decision was so limited by noting that the ordering clause in the Review Board's decision "makes no distinction between [SBBLP]'s application and other applications denied on comparative grounds." RBI PFC at 47. That observation is true. But it is immaterial. Neither the Board nor

administrative law judges made any such distinction. *E.g.* [15], *Barry Skidelsky*, 7 FCC Rcd 1 (Rev. Bd. 1991); *Imagists*, 6 FCC Rcd 7440 (Rev. Bd. 1991); *Marc A. Albert*, 6 FCC Rcd 7160 (ALJ 1991); *Eugene Walton*, 6 FCC Rcd 6071 (Rev. Bd. 1992); *Emision de Radio Balmeseda, Inc.*, 6 FCC Rcd 5239 (ALJ 1991); *Georgia Public Telecommunications Commission*, 6 FCC Rcd 2841 (ALJ Sippel 1991); *National Communications Industries*, 6 FCC Rcd 1978 (Rev. Bd. 1991); *Victorson Group, Inc.*, 6 FCC Rcd 1697 (Rev. Bd. 1991); *Atlantic City Community Broadcasting, Inc.*, 6 FCC Rcd 925 (Rev. Bd. 1990); *McClenahan Broadcasting, Inc.*, 5 FCC Rcd 7269 (Rev. Bd. 1990); *CR Broadcasting, Inc.*, 5 FCC Rcd 5348 (Rev. Bd. 1990); *Albert E. Gary*, 5 FCC Rcd 323 (ALJ Sippel 1990). In each of these cases one or more competing applicants was/were disqualified, while one or more was/were deemed comparatively inferior. But ***all*** unsuccessful applicants were lumped together in a single ordering clause denying their applications. No distinction was drawn between qualified losers and disqualified losers.

72. In other words, the manner in which the Review Board phrased its ordering clauses in the *San Bernardino Proceeding* no more suggested any reversal of Judge Gonzalez disqualification of SBBLP than did the fact that the SBBLP application was included among the applicants listed in the "appearances" and the first paragraph of the *San Bernardino Review Board Decision*.

73. In any event, whether or not the Review Board affirmed Judge Gonzalez's disqualification of Mr. Parker's applicant, it is absolutely undeniable that the Board

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[15] Adams emphasizes that this list of citations is ***not*** a comprehensive listing of all such cases. It is illustrative only.

specifically and expressly held that SBBLP and Mr. Parker had engaged in "attempted fraud" before the Commission. That holding was never appealed, and it remains in full force and effect.

74. So, too, does the Commission's determination in the *Mt. Baker Proceeding* that Mr. Parker's permittee there engaged in "an effort to deceive the Commission". 3 FCC Rcd at 4778 (¶8).

(b) ***THE APPLICABLE STANDARD***

75. In articulating the "legal standard" to which RBI believes Mr. Parker should be held, RBI opts for a terse understatement of the law. RBI PFC at 100. RBI ignores the overwhelming body of law, developed over more than half a century, defining the obligation of candor and forthrightness imposed on all Commission regulatees.

76. All applicants, permittees and licensees are expected to exercise the utmost candor and honesty in their dealings with the Commission. *E.g., Fox River Broadcasting, Inc.*, 93 FCC 2d 127 (1983); *FCC v. WOKO, Inc.*, 329 U.S. 223, 225-27 (1946). Broadcasters are held to "high standards of punctilio" and must be "scrupulous in providing complete and meaningful information" to the Commission. *E.g., Lorain Journal Co. v. FCC*, 351 F.2d 824, 830 (D.C. Cir. 1965). Absolute candor is perhaps the foremost prerequisite for Commission licenseeship. *E.g., Catoctin Broadcasting Corp. of New York*, 2 FCC Rcd 2126 (Rev. Bd. 1987), *aff'd in pertinent part*, 4 FCC Rcd 2553 (1989), *recon. denied*, 4 FCC Rcd 6312 (1989); *Mid-Ohio Communications*, 104 FCC 2d 572 (Rev. Bd. 1986), *rev. denied*, 5 FCC Rcd 940 (1990), *recon. dismissed in part, denied in part*, 5 FCC Rcd 4596 (1990).

77. The duty of candor requires applicants to be fully forthcoming as to ***ALL*** facts and information that ***MAY BE*** decisionally significant to their applications. *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 and 457 U.S. 1119 (1982). This is because the Commission relies heavily on the honesty and probity of its licensees in a regulatory system which is largely self-policing. *See Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 461 (D.C. Cir. 1980) ("[E]ffective regulation is premised upon the agency's ability to depend upon the representations made to it by its licensees . . . .").

78. While "misrepresentation" and "lack of candor" may differ in certain limited respects, the gravamen of both is an intent to mislead the Commission, whether through affirmatively false statements or through evasion and failure to be fully honest and forthcoming. *See, e.g., Fox River, supra*. Where a party is found to have intentionally misled the Commission -- whether through misrepresentation or lack of candor, and even with respect to seemingly insignificant matters -- that party is not qualified to be a Commission regulatee. *E.g., Policy Regarding Character Qualifications in Broadcast Licensing, supra*; *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946); *Center for the Study and Application of Black Economic Development*, 10 FCC Rcd 2836, 2837, ¶6 (Rev. Bd. 1995). In this connection, the necessary intent to mislead or deceive may be found through an evaluation of relevant facts and circumstances. *See, e.g., David Ortiz Radio Corp. v. FCC*, 941 F.2d at 1260 (D.C. Cir. 1991) (intent to deceive can be found in "the fact of misrepresentation coupled with proof that the party making it had

knowledge of its falsity").

79. The high duty of candor imposed on Commission regulatees is illustrated in two very recent decisions of the U.S. Court of Appeals for the District of Columbia. In *Schoenbohm v. FCC*, 204 F.3d 243 (D.C. Cir. 2000), the Court affirmed the Commission's denial of renewal of amateur radio licenses. The licensee, Schoenbohm, had been convicted of fraudulently use of counterfeit access codes to obtain long distance telephone services. On the basis of that conviction, Schoenbohm's renewal applications were designated for hearing to determine the effect of his conviction on his qualifications to remain a licensee.

80. The nature of Schoenbohm's criminal misconduct was a matter of public record, and the record of that conviction was fully available to the Commission. Schoenbohm himself initially conceded that his conviction involved use of a counterfeit access device. However, in subsequent presentations during the hearing, he described his criminal misconduct in different terms in an apparent effort to minimize its significance.

81. The Commission determined that Schoenbohm's effort, during the hearing, to re-characterize his misconduct constituted disqualifying misrepresentation independent of the criminal conviction. *Herbert L. Schoenbohm*, 13 FCC Rcd 15028, 15033-15034 (1998). According to the Commission,

> Schoenbohm was permitted to explain ***truthfully*** the nature and circumstances of his conviction, but not to give the false impression that it was based on something other than the performance of specific acts by him. . . .

Id. at 15034 (emphasis in original). The Court of Appeals affirmed the Commission's conclusion that Schoenbohm had "intentionally portrayed his crime in a misleading

manner in order to minimize its significance." 204 F.3d at 248 (D.C. Cir. 2000).

82. Several months after *Schoenbohm*, the Court of Appeals affirmed the Commission's revocation of certain broadcast licenses in *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000). In that case, the sole shareholder ("Rice") of a corporate broadcast licensee had been convicted of sexual abusing children. The conviction was reported to the Commission in June, 1991 with the further information that Rice had since had "no managerial, policy or consultative role in the affairs of the three broadcast corporations." 214 F.3d at 190. In May, 1992, approximately one year later, the licensees reported that Rice had been released from hospitalization, but that there had been no change in his status with the licensees. According to that report, Rice "continue[d] to have no managerial or policy role in the affairs" of the licensees. *Id.*

83. However, upon investigation by the Commission, it turned out that Rice ***had*** been involved in the licensees' affairs. The licensees argued that Rice's latterday involvement was merely "consultative", and that the licensees had put the Commission on notice of such involvement when it deleted the word "consultative" from its May, 1992 report. 214 F.3d at 197. According to the licensee, its May, 1992 report had made that "critical distinction" and had thus put the Commission on notice of the fact that Rice had recommenced some role in the licensees' activities. *Id.* The licensees maintained that their reports had been "fully forthcoming" and candid. *Id.*

84. Neither the Commission nor the Court of Appeals accepted this claim. The Commission revoked the licenses for, *inter alia*, misrepresentation. The Court

affirmed. According to the Court,

> Only a side-by-side, line-by-line comparison of the two filings -- conducted with some skepticism of the licensees' candor -- would have detected the subtle difference in language upon which the licensees now rely. In 1992, however, the FCC had no reason to conduct such a forensic comparison of the two representations . . . .

214 F.3d at 197. At oral argument, the licensees argued that, by reporting in May, 1992, that there had "been no change in Mr. Rice's status", they had intended only to indicate that there had been no change in Rice's "ownership or managerial" status. The Court rejected that argument, tersely observing that the licensee's report was "completely unqualified". *Id.*

85. The legal principles underlying *Schoenbohm* and *Contemporary Media* are clear. Commission regulatees must be completely forthcoming in their disclosures to the Commission. Regulatees are not permitted to provide partial, seemingly forthcoming information, and then plead innocence if the Commission accepts the partial information unskeptically. And when regulatees are confronted with their misconduct, they must acknowledge it truthfully and accurately, without attempting to re-cast it in more innocent terms.

(c) *MR. PARKER'S "DISCLOSURES" FELL FAR SHORT OF THE APPLICABLE STANDARD.*

86. In light of the foregoing, it is clear that RBI's claims concerning the "complete and accurate" nature of Mr. Parker's disclosures are simply wrong.

87. As noted above, both the *Mt. Baker Proceeding* and the *San Bernardino Proceeding* involved express determinations of fraudulent or deceptive conduct by

Mr. Parker. Each of the application forms signed by Mr. Parker for the Los Angeles LPTV Application and the WHRC(TV) Transfer, WTVE(TV) Transfer, KVMD(TV) Transfer and KCBI Assignment specifically required "full disclosure" about ***ANY*** administrative proceeding(s) involving "fraud" by any party to the application. *See* Adams PFC at ¶¶286, 291, 295, 299 and 303. In each case, Mr. Parker responded that there were no such proceedings. His responses made no mention of the *Mt. Baker* or *San Bernardino* proceedings.

88. But the *Mt. Baker* decision had clearly held that Mr. Parker's company had engaged in an "effort to deceive the Commission". And whether or not the Review Board disqualified SBBLP, it is clear that the Board concluded unequivocally that, in the *San Bernardino Proceeding*, Mr. Parker had engaged in "a transpicuous sham" and an "attempted fraud". As a result, Mr. Parker's negative answers to the "fraud" questions in these applications were flatly misrepresentative.

89. Mr. Parker was asked why he had so responded. His explanation, at Tr. 1944-1946, was that he did not believe that he had been found to have engaged in fraudulent misconduct. [16/] But that flies in the face of the express language of the *Mt. Baker* and *San Bernardino* proceedings. [17/]

[16/] *See, e.g.*, Tr. 1945-1946:

Q: So your testimony is that the review board's reference to "attempted fraud" on the part of SBB had nothing to do with you?

A: Not in terms of a finding of fraud, no. I don't believe that to be the case.

[17/] At page 64 of its PFC, the Bureau implies that Mr. Parker's negative responses to the "fraud" questions may be excused because those questions "focus[ ]" on "***non-FCC***

(continued...)

90. In his various applications Mr. Parker did provide descriptions of the *Mt. Baker* and *San Bernardino* proceedings, but only in response to Question 7, *i.e.*, which sought disclosure of whether he had had any interest in or connection with any application which had been dismissed or denied. *See, e.g.*, Adams PFC at 133-134. Mr. Parker's descriptions did not include any reference at all to the adverse findings of fraud or deceit. Thus, the *Mt. Baker Proceeding* was said to have involved only the denial of an construction permit extension application. As for *San Bernardino*, Mr. Parker provided the following information:

> Although neither an applicant nor the holder of an interest in the applicant to the proceeding, Micheal Parker's role as a paid independent consultant to [SBBLP] . . . was such that the general partner in [SBBLP] was held not to be the real party in interest to that applicant and that, instead, for purposes of the comparative analysis of [SBBLP]'s integration and diversification credit, Mr. Parker was deemed such.

E.g., Adams Exh. 51, pp. 17-18.

91. In its PFC RBI argues at length that RBI should not have been expected or required to provide any information not required by the application form. RBI PFC

[17/](...continued)
proceedings" (emphasis in original) and that the "primary focus" is on "adjudicated" misconduct. These statements, however, are contradicted by the language of the application form. The form required "full disclosure" of any proceeding relating to, *inter alia*, fraud before "***any*** court or ***administrative body***" (emphasis added); it also required "full disclosure" of any such proceeding which may be "pending". This language on its face plainly included proceedings before the Commission, which is an "administrative body", involving fraud. Nothing in the application forms suggested, much less directed, that proceedings involving fraud before the Commission should not be disclosed in response to this Question 4. Moreover, even if the Bureau's attempt to read new language into the application were valid, the fact is that Mr. Parker testified that he answered "no" to those questions because he did not believe that he had been found to have engaged in fraud. Tr. 1944-1946.

at 107-113. This argument cannot get Mr. Parker off the hook.

92. First, even if RBI's statement of the applicable legal standard were completely and unconditionally correct, then Mr. Parker was required to provide information about the adverse findings of his fraudulent and deceitful misconduct in response to Question 4 of the application. That question unequivocally requires "full disclosure" of such adverse findings. Thus, even under RBI's own limited view of Mr. Parker's disclosure obligations, he fell short.

93. A second fundamental problem with RBI's "name/rank/serial number" approach is that Mr. Parker himself did not take that approach in his "disclosure" concerning *San Bernardino*. RBI seems to argue that Question 7, to which Mr. Parker was responding, did not require the submission of any description of the applications being disclosed in response to that question. RBI PFC at 107-113. True enough, Question 7 of the application form by its terms requires the submission of the name of the party, the nature of the interest in the dismissed/denied application (including dates), the call letters, file number or docket number associated with the application, and the location of the station in question. *E.g.*, Adams Exh. 52, p. 12

94. But if RBI and Mr. Parker believe that he was required to provide only that information, his response need not have included any verbiage characterizing the disposition of the real-party-in-interest issue at all. As indicated in the quotation above, however, Mr. Parker's "disclosure" did include such extra verbiage. And that extra verbiage was plainly designed to depict the underlying proceeding as purely a matter of comparative concern.

95. Mr. Parker's "disclosures" were thus analogous to Schoenbohm's attempts to put a favorable spin on unfavorable information. And just as Schoenbohm's efforts were found to be misrepresentative, so should Mr. Parker's.

96. This is particularly true in light of Mr. Parker's subsequent "disclosures". In the Dallas Amendment, for example, Mr. Parker specifically stated that no basic character issues had been sought or added against him in, *e.g., San Bernardino*. That was flatly wrong. While RBI now attempts to explain how the Dallas Amendment might somehow be read to be accurate in some fashion, *see, e.g.*, RBI PFC at 106-107, the fact is that, like the May, 1992 report filed by the licensee in *Contemporary Media*, Mr. Parker's Dallas Amendment contains, on its face, no hint whatsoever of the import later ascribed to that submission.

97. Mr. Parker's testimony in this proceeding reflect the same proclivities. Over and over again, Mr. Parker attempted to affirmatively evade responsibility for his own misconduct. One obvious example illustrates this.

98. The *San Bernardino* record establishes conclusively that Mr. Parker was the real-party-in-interest in SBBLP. Despite this, his "disclosure" stated that he was "neither an applicant nor the holder of an interest in the applicant". During cross examination he was asked how he could say that in light of the fact that he was held to be the real-party-in-interest. In response he repeatedly claimed that he himself had not been guilty of any impropriety. Rather, according to Mr. Parker, "the impropriety was done by Ms. Van Osd[el] by not disclosing" his involvement in SBBLP. Tr. 2010.

99. This was not an isolated accidental overstatement or misstatement. Rather,

it was a recurring motif, a mantra intoned by Mr. Parker over and over. *See* Tr. 1964 ("the applicant should have reported the level of my involvement"); 1967 ("the applicant should have disclosed [his interest] in her application"); 1969 ("had [Ms. Osdel] reported [Mr. Parker's] involvement there never would have been an issue added"); 2008 ("Ms. Osd[el] was the applicant. She didn't report me"); 2085 ("it was [Ms. Van Osdel's] error in not having disclosed me in her application; and that in fact was the limit to any problem"); 2636 ("my understanding of [the real-party-in-interest issue] was that Ms. Van Osdale should have reported my involvement beyond what she did").

100. These attempted evasions are shocking because it was Mr. Parker, ***NOT*** Ms. Van Osdel, who prepared the SBBLP application. *See, e.g.*, 2 FCC Rcd at 6567 (¶57); 3 FCC Rcd at 4090 (¶16). So if the real problem with SBBLP was a failure to fully and accurately report Mr. Parker's involvement, then that failure was solely Mr. Parker's fault!

101. This was brought to Mr. Parker's attention on the witness stand. He was asked to confirm that he had in fact prepared the SBBLP application. That is a factual matter clearly established in the opinions of Judge Gonzalez and the Review Board. And yet, Mr. Parker sought to avoid a direct answer, *e.g.*, Tr. 2008-2009 ("your interpretation is one way; mine's another"), before finally, grudgingly, acknowledging that he himself had prepared the SBBLP application, Tr. 2011-2012.

102. The record of this case demonstrates that Mr. Parker has engaged in precisely the same misconduct as the disqualified licensees in *Contemporary Media* and *Schoenbohm*. His "disclosures" in his applications, including the Dallas Amendment,

have been at best disingenuous efforts to lull the processing staff by omitting important information. It is clear that that information would have had a decisional impact on his applications: in 1997, after Mr. Parker's history had been spelled out in detail to the Commission, the full Commission specifically held that his history gave rise to "serious character questions." *Two If By Sea Broadcasting, Inc.*, 12 FCC Rcd 2254 (1997).

103. The fact that the processing staff granted Mr. Parker's applications is immaterial. As was the case in *Contemporary Media*, the staff had no reason to conduct a "forensic" examination of Mr. Parker's disclosures, and there was no reason for the staff to be skeptical of those disclosures. After all, as set out in precedent extending more than half a century, the Commission can and does expect its regulatees to be honest, candid and fully forthcoming. The Commission's staff does not, and should not be expected to, double- and triple-check all disclosures submitted to it as if the word of every Commission regulatee is to be doubted.

104. In his "disclosures" to the Commission, therefore, Mr. Parker engaged in misrepresentation or lack of candor akin to the misconduct found to be disqualifying in *Contemporary Media*. [18/]

[18/] Adams is mindful of RBI's argument that applicants are entitled to "clear notice" of what is expected of them. RBI PFC at 107-112. But it cannot seriously be argued that Mr. Parker was not aware that the Commission expected him to disclose previous findings of fraudulent misconduct by him. As previously noted, all of the applications which Mr. Parker filed expressly sought "full disclosure" of such findings. And the Commission had made crystal clear in, *e.g., Character Qualifications in Broadcast Licensing*, 102 FCC2d 1179, 1190-1191 (1986), that a primary focus of its concern about character qualifications is "the proclivity of an applicant to deal truthfully with the Commission." RBI and Mr. Parker cannot be heard to claim that Mr. Parker was not aware of the need to be forthright and candid about his history of fraudulent misconduct,

(continued...)

105. And in his testimony in this proceeding, he has repeatedly sought to portray his misconduct in a misleading manner to minimize its significance, just like Schoenbohm. Mr. Parker knows what he did wrong. He also knows that he was caught red-handed at it in both *Mt. Baker* and *San Bernardino* -- the decisions in those cases establish that beyond argument. And yet, up to and including his testimony in June, 2000, Mr. Parker has continually attempted to misdirect attention to others, to suggest that he himself is blameless. Such efforts to mislead were deemed to be disqualifying in *Schoenbohm* and they should be deemed disqualifying here.

(2) **THE RECORD CONTAINS AMPLE EVIDENCE OF AN INTENT TO DECEIVE.**

106. The necessary intent to mislead or deceive may be found through an evaluation of relevant facts and circumstances. *E.g., David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253 (D.C. Cir. 1991). Contrary to RBI PFC at 114-124, the record here amply supports such an intent by Mr. Parker.

107. The fact of a misrepresentation coupled with proof that the party making it had knowledge of its falsity is enough to justify a conclusion that there was fraudulent intent. *E.g., Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 461 (D.C. Cir. 1980). Here, Mr. Parker had reviewed the *Mt. Baker* and *San Bernardino* decisions and was therefore aware that each had entailed findings concerning fraudulent or deceitful misconduct by him. And yet, he responded "no" to Question 4 in each of his

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[18/](...continued)
or that the Commission had failed in any way to make its expectations in that regard abundantly clear.

applications, which specifically sought information about such findings. And his "disclosures" concerning those cases were themselves obviously misleading, as discussed above, despite the fact that he himself, having been centrally involved in the conduct underlying both of those earlier proceedings, was personally aware of that conduct.

(a) *ADVICE OF COUNSEL*

108. Still, RBI suggests that Mr. Parker was an innocent naif wholly dependent on the advice of his counsel. RBI PFC at 114-124. The record belies that suggestion.

109. First, there is Mr. Parker himself. He was Mayor of Tacoma. Tr. 826. Since approximately 1980, he has provided consulting services to broadcast applicants. Tr. 784. And if that alone were not enough to sensitize him to the need for complete honesty and candor, he was the subject of two very harsh decisions in *Mt. Baker* and *San Bernardino*. By 1988, then, Mr. Parker ***had*** to be alert to the need to be completely candid and forthright in his dealings with the Commission.

110. Second, Mr. Parker's reliance on counsel was far from consistent, and arguably non-existent. For example, he was unable to identify the person who prepared his "disclosures" in the WHRC(TV) Transfer Application. That was the first of several appearances of those "disclosures", and it marked an important milepost. Prior the WHRC(TV) Transfer Application, Mr. Parker had not said anything to the Commission about the *San Bernardino Proceeding*. That changed in the WHRC(TV) Transfer Application. Therefore, the preparation of the WHRC(TV) Transfer Application was significant.

111. But Mr. Parker declined to use the Mr. Wadlow and the Sidley attorneys

for that application. And Mr. Wadlow testified that neither he nor any Sidley attorney was involved in the drafting of the WHRC(TV) Transfer Application. Tr. 1805, 2105-2106. [19/] While Mr. Parker suggested that Mr. Kravetz might have been involved in the preparation of his portion of that application, Mr. Kravetz specifically denied any such involvement. Tr. 2346. During the timeframe of the WHRC(TV) Transfer Application, Mr. Parker had no other communications counsel. And Mr. Parker could not recall exactly who drafted those "disclosures".

112. So much for reliance on counsel.

113. While Mr. Wadlow and the Sidley Attorneys were involved in the preparation of the WTVE(TV) Transfer Application, they did not themselves draft the "disclosures" in that application. Instead, they simply utilized the "disclosures" which Mr. Parker presented them from the WHRC(TV) Transfer Application. Mr. Parker similarly used the same "disclosures" in the KVMD(TV) Transfer Application and KCBI Assignment Application, both of which were filed essentially *pro se*.

114. Again, so much for reliance on counsel.

115. And when it came to the Dallas Amendment, Mr. Kravetz testified that he relied on information provided to him by Mr. Parker, not vice versa. Tr. 2354-2355. In its PFC RBI states that Kravetz "prepared the [Dallas] amendment, which Parker signed",

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[19/] Mr. Parker suggested that the "disclosure" in the WHRC(TV) Transfer Application may have been "plagiarized" from some other document Mr. Wadlow prepared. Tr. 1952. But Mr. Parker could identify only one such document which might have been "plagiarized", and that document, a disclosure statement filed with the bankruptcy court, did not contain any reference at all to the *San Bernardino Proceeding*. *See* Adams PFC at 152, n. 67.